



DECISION COVER SHEET

☒ **ACTION BY:** Public Members Only

☐ **ACTION BY:** All Members

To : BOARD MEMBERS

Date: April 12, 2019

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: MAVERICK AUTO GROUP 2, LLC, a California Limited Liability Company v. VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey Corporation
Protest No. PR-2581-18

TYPE: Vehicle Code section 3060 Termination

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: December 7, 2018
- MOTIONS FILED: "Respondent Volkswagen of America, Inc., an Operating Unit of Volkswagen Group of America, Inc.'s Motion to Dismiss Protest"
- COUNSEL FOR PROTESTANTS: Christian J. Scali, Esq.
Halbert B. Rasmussen, Esq.
Jade F. Jurdi, Esq.
Scali Rasmussen
- COUNSEL FOR RESPONDENT: Richard H. Otera, Esq.
Lauren A. Deeb, Esq.
Jessica M. Higashiyama, Esq.
Nelson Mullins Riley & Scarborough LLP
- EFFECT OF PROPOSED ORDER: The Proposed Order grants "Respondent Volkswagen of America, Inc., an Operating Unit of Volkswagen Group of America, Inc.'s Motion to Dismiss Protest." The Proposed Order finds that VWoA has established good cause to terminate the franchise. The Proposed Order would dismiss the protest with prejudice.

Background Findings

- Maverick Auto Group 2, LLC, dba Volkswagen of Fairfield, a California Limited Liability Company ("Fairfield VW" or "Protestant") timely filed a termination protest contending Volkswagen Group of America, Inc. ("VWoA") lacks good cause to terminate its franchise.
- Fairfield VW is part of the Momentum Auto Group ("Momentum") which also operates

several other dealerships in the Fairfield /Vallejo markets, all of which are owned by Rahim Hassanally. Many of Mr. Hassanally's dealerships were cross-guarantors of, or parties to, the flooring debts of his other dealerships and Mr. Hassanally was a personal guarantor of the flooring debts of all of the dealerships.

- Protestant has conducted no operations at the dealership since at least November 16, 2018. All eight of the other dealerships of Momentum in Solano County also ceased operations about the same time. (See list in Related Matters below.)
- The last vehicle ordered by Protestant from VWoA was on October 30, 2018. The last new Volkswagen vehicle that Protestant sold was on October 30, 2018. Protestant has not sold any new Volkswagen vehicles following its closure.
- The last part order submitted to VWoA by Protestant was on November 2, 2018 and the last warranty claim was submitted on November 12, 2018 for a warranty repair completed on November 9, 2018. Protestant has not conducted any service business following its closure.
- As of at least November 21, 2018, Protestant's occupational license as a new motor vehicle dealer is designated by the DMV as "Not Valid".
- Fairfield VW has no facilities from which to operate, has no new vehicle inventory, and, along with Momentum Group, is insolvent.
- Fairfield VW's secured lending entity that formerly provided its line of wholesale financing filed a lawsuit against it and various affiliates seeking recovery of \$16 million plus interest, costs, and fees from Protestant, Mr. Hassanally, and the other defendants.
- The likelihood of Fairfield VW ever being able to reopen its dealership is so remote as to be deemed impossible.
- In the instant case, a Board order sustaining the Protest cannot prevent the loss of the Fairfield VW dealership, cannot protect the investment of the owner, and cannot allow the dealership to continue to serve the public in the market area.
- The ALJ also found that VWoA, through declarations and exhibits, as a matter of law has established good cause to terminate the franchise taking into consideration the existing circumstances and all of the specific factors listed in Section 3061.

RELATED MATTERS:

- Related Board Protests: There were a total of 21 protests filed pertaining to the Momentum terminations. The non-VWoA protests are as follows:
 - PR-2578-18, PR-2584-18, PR-2585-18 Vallejo Imports, LLC, a California Limited Liability Company v. Kia Motors America, Inc., a California Corporation
 - PR-2579-18 and PR-2580-18 Fairfield Imports, LLC, a California Limited Liability

- Company v. Toyota Motor Sales, USA, Inc., a California Corporation
- PR-2582-18 and PR-2583-18 Fairfield Imports Three, LLC, a California Limited Liability Company v. Hyundai Motor America, a California Corporation
- PR-2586-18 Fairfield Imports Three, LLC, a California Limited Liability Company v. Mitsubishi Motors North America, Inc., a California Corporation
- PR-2587-19 and PR-2588-18 Fairfield Imports Two, LLC, a California Limited Liability Company v. Nissan North America, Inc., a California Corporation (Nissan)
- Protest Nos. PR-2589-18, PR-2590-18, PR-2591-18, and PR-2592-18 Vallejo CJD, LLC, a California Limited Liability Company v. FCA US LLC, a Delaware Limited Liability Company
- Protest Nos. PR-2593-18, PR-2594-18, PR-2595-18, and PR-2596-18 Fairfield CJD, LP, a California Limited Partnership v. FCA US LLC, a Delaware Limited Liability Company
- PR-2597-18 and PR-2598-18 Fairfield Imports Two, LLC, a California Limited Liability Company v. Nissan North America, Inc., a California Corporation (Infiniti)

The Board has already adopted the ALJ's Proposed Decision dismissing the eight protests filed by the FCA franchisees (Vallejo CJD, LLC and Fairfield CJD LP). Motions to Dismiss are pending for all the others with the exception of the Toyota protests.

- Related Case Law: *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626, 637
- Applicable Statutes and Regulations: Vehicle Code sections 331, 331.1, 331.2, 3050, 3060 and 3061
Evidence Code section 452
Government Code Section 11425.60, 11515
California Uniform Commercial Code section 1201(b)(23)
U.S. Code Annotated section 101(32)